

## **FREQUENTLY ASKED QUESTIONS: CONTROVERSIES AND DISPUTES**

### **What is the Bureau of Controversies and Disputes?**

This office assists the Commissioner in using the [process established by the Administrative Procedure Act](#) to hear and decide disputes under the [State school laws](#). The office receives, docket and reviews petitions filed by parties seeking rulings from the Commissioner. It arranges for hearings at the [Office of Administrative Law](#) (OAL), where parties present argument and evidence, and works with the Commissioner in subsequent review of case files and OAL recommendations. It assists the Commissioner in preparation of final written decisions and maintains records of decisions issued. It also provides, upon inquiry, general information about State school law and procedures for appeal to the Commissioner.

### **What is a controversy or dispute under the State school laws?**

A controversy or dispute under the State school laws arises when one party alleges that another has violated [State statutes governing education](#) or [rules of the State Board of Education](#), generally as a result of divergent views of the meaning and application of the law, and seeks a legal ruling from the Commissioner resolving the dispute. Typical parties in school law disputes are parents, who may file on their own behalf and/or on behalf of their minor children; adult students; school officials and employees; boards of education and board members; charter schools; private schools for the handicapped; and, in cases where decisions of Department officials are appealed to the Commissioner, the State Department of Education. Common types of cases include disputes about student discipline, student residency/domicile status, tenure/seniority claims, tenure charges, actions of local boards of education, certain decisions of the [New Jersey State Interscholastic Athletic Association](#) (NJSIAA), and final decisions on penalties recommended by the [School Ethics Commission](#) upon finding that school officials have violated the School Ethics Act. Other significant types of cases include severance of sending-receiving relationships, transportation disputes, audit appeals, and disputes regarding payment of tuition or State funding. Hearings on [appeal to the Commissioner for issuance of bonds](#) following defeat of referenda under the Educational Facilities Construction and Financing Act (EFCFA) are also arranged through Controversies and Disputes.

### **What types of matters are *not* handled through Controversies and Disputes?**

- Disputes arising under the laws governing special education are pursued through the Department's [Office of Special Education](#).
- Complaints against school officials under the School Ethics Act are pursued through the [School Ethics Commission](#).
- Matters appropriate for Department of Education investigation or audit, such as overspent budgets, financial malfeasance, and compliance with criminal history record check laws, are best directed to the Department's [Office of Compliance Investigation](#).
- Disputes arising from decisions made during the development, selection and implementation processes for awarding state and federal grants are pursued through the Department's [Office of Grants Appeals](#).
- Certain types of school-related disputes do not arise under State education law, and resolution of them must be pursued through other State agencies or the courts, or at the federal level. For example, generally speaking: Claims of employment discrimination are heard by the [Division on Civil Rights](#) even though an alleged violation has occurred in a school setting. Challenges to the facial validity of a Statute or rule, even though a school law, are taken to [State courts](#) or [federal courts](#). Matters involving negotiated agreements or the collective bargaining process fall under the [Public Employment Relations Commission](#), and matters involving school employee pensions under the [Division of Pensions in the Department of Treasury](#). Issues arising under the Open Public Records Act are decided by the courts or through the [Government Records Council](#), and alleged "Sunshine Law" (Open Public Meetings Act) violations are heard in [Superior Court](#).

- Many day-to-day issues commonly concerning parents, students and the public are not appropriate for judicial-type hearings and legal rulings at the State level and are best pursued through the [local school district administration and board of education](#). Where problems or questions persist, assistance with resolution may be available through the office of the [County Superintendent of Schools](#).
- Disagreement with a local board of education, in the absence of allegations that the law is being violated, does not create a viable dispute before the Commissioner. When a board exercises its discretion and takes action within the scope of authority granted it by statute or rule, unless a petitioner can demonstrate on appeal that the board's action was taken without rational basis or in bad faith, or was contrary to law, the Commissioner may not substitute his judgment for that of the board and must uphold the board's action.

### **How do I initiate an appeal to the Commissioner?**

Before initiating an appeal to the Commissioner, a petitioner must generally have pursued available rights of appeal at lower levels, including the local board of education. If still aggrieved, a party may appeal to the Commissioner within 90 days (less where a specific law requires) of receipt of notice of final action, by filing a Petition of Appeal with the Bureau of Controversies and Disputes according to the procedures detailed in [N.J.A.C. 6A:3-1.1. et seq.](#)

### **Do different types of appeals have different filing requirements?**

Special regulatory requirements pertain to declaratory rulings, tenure charges, uncontested applications for severance of sending-receiving relationships, appeals from decisions of the NJSIAA, "Abbott" appeals, and appeals from district determinations of ineligibility to attend school based on residency/domicile. These are set forth in the pertinent sections of [N.J.A.C. 6A:3-1.1. et seq.](#) A package of informational materials and sample forms for [residency/domicile issues/appeals](#) is also available.

### **What happens after an appeal is filed?**

Filing a Petition of Appeal initiates a "contested case proceeding" where the petitioner will bear the burden of proving the allegations made in the petition through presentation of evidence and argument. In most cases, the alleged violator ("respondent") will be required to answer the petitioner's allegations within 20 days, and the matter will be sent to the [Office of Administrative Law](#) (OAL) for [hearing](#) of testimony and argument and consideration of evidence by an Administrative Law Judge (ALJ) in accordance with the [Administrative Procedure Act](#). At the conclusion of OAL proceedings, the ALJ issues an initial decision recommending findings of fact and conclusions of law to the Commissioner. The initial decision and entire case record are then sent to the Commissioner, who has 45 days from the filing of the initial decision to review the matter, receive exceptions from the parties, and issue a final decision adopting, rejecting or modifying the initial decision of the ALJ. The ALJ's decision is, in itself, of no force and effect, but final Commissioner decisions have the force of law unless stayed or reversed on appeal.

### **If a party is dissatisfied with the Commissioner's decision, can it be appealed?**

Yes. Commissioner decisions may be appealed through the [State Board Appeals Office](#) to the State Board of Education, which is the ultimate administrative fact-finder and decision-maker in matters arising under the education laws, and thereafter to the courts. Exceptions include appeals from decisions of the [New Jersey Interscholastic Athletic Association](#) (NJSIAA) and "[Abbott](#)" appeals, which are, by law, appealable directly to the [Appellate Division of Superior Court](#).

### **How many cases are filed each year? Where can I find past Commissioner decisions?**

Between 500 and 600 Petitions of Appeal are filed most years. Many of these are withdrawn or resolved by settlement, but many others result in substantive decisions of the Commissioner. Substantive Commissioner decisions issued since mid-1997 are available on the Department's website at [New Jersey School Law](#), as is information about where to find earlier decisions.

[FAQ: Legal Issues \(Introductory Page\)](#)